

REMARKS

Claims 1-20, 22, and 29-32 are pending in the application.

Claims 29-32 stand objected to based upon form. Appropriate amendment has been made to address the problems identified by the Examiner.

Claims 1-3, 15-19 and 29-31 stand rejected under 35 U.S.C. § 103 as obvious over U.S. Patent No. 558,014 (Elborne) in view of the website printout that the Examiner has identified as "Busy-Kids". Claim 14 stands rejected under 35 U.S.C. § 103 as obvious over Elborne in view of U.S. Patent No. Des. 378,992 (Dachille) and U.S. Patent No. 4,851,061 (Sorkoram '061). Claim 20 stands rejected under 35 U.S.C. § 103 as obvious over Elborne in view of Dachille, and further in view of U.S. Patent No. 2,369,988 (Steckler). Claim 30 stands rejected under 35 U.S.C. § 103 as obvious over Elborne in view of Busy-Kids, and further in view of U.S. Patent No. Des. 24,404 (Wiederer). Claims 4-7, 10-13 and 22 stand rejected under 35 U.S.C. § 103 as obvious over Elborne in view of Dachille, and further in view of U.S. Patent No. 5,128,194 (Sorkoram '194). Claims 8 and 9 stand rejected under 35 U.S.C. § 103 as obvious over Elborne in view of Dachille and further in view of Sorkoram '194, and either of U.S. Patent Nos. 5,702,649 (Taylor) or 2,145,732 (Nickle).

Reconsideration of the rejection of claims 1-20, 22 and 29-32 is requested.

Claim 1 is directed to an apparatus for gauging a dimension of an object that incorporates features that are both functional and entertaining in nature. With the apparatus in claim 1, an individual can situate himself/herself at the front of the wall and observe three different things: 1) a reflected image of himself/herself; 2) spaced graduations relative to which the individual's image appears and a height can be gauged;

and 3) a depiction of at least one of a) an animate object; b) an inanimate object; and c) a scene. The components are coordinated so that the reflected image of the user appears to be integrated with the subject matter of the depiction of at least one of a) an animate object; b) an inanimate object; c) a scene.

It is respectively submitted that the combination of Elborne and Busy-Kids, proposed by the Examiner in rejecting claim 1, results from the impermissible use of hindsight, with the Examiner having the benefit of applicant's teachings in hand. It is elementary that an obviousness rejection must articulate the motivation, suggestion or teaching that would have led one skilled in the art to combine elements as proposed. In making this determination, it is necessary to look not only at the individual references applied, but the prior art as a whole.

A look at the prior as a whole is compelling that the combination proposed by the Examiner is not appropriate. Elborne's technology dates back to 1896. Elborne teaches a mirrored front surface with graduations thereon for purposes of height gauging. The concept of adorning mirrors to make them intriguing likewise is an age old process. Wiederer, cited by the Examiner, and issued in 1895, discloses a clown integrated into the frame support for a mirror, presumably to make the same appealing to particularly the young. The 1900's were replete with additions to basic measuring devices to make them more attractive, particularly to children. Examples of this are shown in Dachille and Steckler, both cited by the Examiner. Other examples of mirrored frame designs, apparently aimed at attracting the attention of young children, are shown in U.S. Patent Nos. Des. 277,720 (Leifert) and 403,514 (Beaumont), both cited by Examiner, but not applied in rejecting any of the claims. The more recent Busy-Kids disclosure is also replete

with different types of mirrors aimed at a young audience. Among these is the “FRIENDLY T-REX MIRROR”, with which the user is allowed to see a reflected image of himself/herself in conjunction with the depiction of the “T-REX”.

Interestingly, over the course of in excess of one hundred years, technologies with: a) mirrored surfaces with graduations; and b) additions to mirrors making them intriguing to young audiences, have moved in parallel, but never merged until applicant’s invention herein. Highly telling is the Busy-Kids disclosure of the “MEASURE ME MIRROR”, which is mixed in with many other children’s mirrors, yet shows essentially only what is shown in Elborne. That is, it lacks any incorporation of an animate object, inanimate object, or scene, that can be viewed in conjunction with the reflected image of the individual in front of the reflective surface, with the graduations.

The art as a whole collectively shows only the pieces recited in claim 1, but does not teach, suggest, or motivate the combination now made by the Examiner. It is respectively submitted that with a relatively simple concept as is at hand, there is a particular temptation to treat as insignificant the advance made by a particular invention. However, after over one hundred years of these parts co-existing, they have never been put together to provide the unique entertaining and functional product that applicant now claims.

Applicant’s position is further supported by the cited seven pages of the site “WATCH ME GROW UP.COM”. The Examiner refers to page 3 therein for the disclosure of mirrors shown in conjunction with animal based charts. However, the only apparatus in these pages that appears to show the combination of the mirror, graduations, and depiction of objects or a scene are those on page 3, which are applicant’s own products. This even further confirms the non-obviousness of the invention, given that all of the charts

shown have artistic additions appealing to children, yet none, with the exception of applicant's, incorporates the mirror feature as well as the graduations and depiction of the object or scene that are presented in a manner so that the user can get the sense that he/she is integrated into the subject matter of that depiction.

Accordingly, it is respectfully submitted that the combination of Elborne and Busy-Kids results from the use of hindsight. The Examiner has not identified where the motivation, suggestion or teaching to combine comes from other than the fact that the components in claim 1 separately exist in the prior art.

The remaining claims depend from claim 1 and recite further significant structural detail to further distinguish over the prior art. The secondary references, in each case combined with Elborne, do not teach or suggest the basic structure in claim 1, from which these claims each depends.

Reconsideration of the rejection of claims 1-20, 22 and 29-32 and allowance of the case are requested.

Respectfully submitted,

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